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DEPARTMENT OF JUSTICE**

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Mr. Tomas Stafford
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Ms. Janet Jenkins
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125 South Webster Street
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Dear Mr. Stafford & Ms. Jenkins:

¶1. You inquire, in your respective capacities as General Counsel of the University of Wisconsin System (“UWS”) and Chief Legal Counsel of the Department of Public Instruction (“DPI”), about the impact of 2013 Wisconsin Act 20’s creation of a new “course options” provision under Wis. Stat. § 118.52. Specifically, you ask about its effect on the long-standing practice of concurrent enrollment, a program UWS calls “College Credit in High School.” This program enables high school students to take college-level courses at their schools that qualify for college credit. The courses are taught by a high school teacher who is classified as an adjunct instructor of the UWS institution offering the course. The teacher conducts the course under the supervision of that institution. A student taking the course is enrolled in the UWS as a special student. You ask whether concurrent enrollment classes come within the ambit of the new course options provision.

¶2. I conclude that revised Wis. Stat. § 118.52 applies to concurrent enrollment classes. The statute applies when a high school student “attends an educational institution [including the University of Wisconsin System] for the purpose of taking a course offered by the educational institution.” Wis. Stat. § 118.52(1)(am), (2). Based on the description of the concurrent enrollment program provided by UWS and DPI, I find that a student participating in

concurrent enrollment classes attends UWS for the purpose of taking a course offered by that educational institution.¹

¶3. 2013 Wisconsin Act 20 amended Wis. Stat. § 118.52. Prior to its amendment, the statute was titled “Part-time open enrollment.” It set forth the rules under which public school pupils could attend classes in a “Nonresident school district” on a part-time basis. Wis. Stat. § 118.52(2) (2011-12). A “Nonresident school district” was (and still is) defined as “a school district, other than a pupil’s resident school district, in which the pupil is attending a course or has applied to attend a course under this section.” *Id.* at § 118.52(1)(b). The statute did not address concurrent enrollment courses, or any other course a student might take at or through UWS.

¶4. With the enactment of 2013 Wisconsin Act 20, Wis. Stat. §118.52 was retitled “Course options.” Revised Wis. Stat. § 118.52(1) adds the following subsection to the statute’s “definitions” section:

“Educational institution” includes a public school in a nonresident school district, the University of Wisconsin System, a technical college, a nonprofit institution of higher education, a tribal college, a charter school, and any nonprofit organization that has been approved by the department.

Wis. Stat. § 118.52(1)(am). Thus, under the revised statute, “[a] pupil enrolled in a public school may attend *an educational institution* under this section for the purpose of taking a course offered by *the educational institution*.” *Id.* at § 118.52(2).

¶5. Prior to the amendment of Wis. Stat. § 118.52(12), a concurrent enrollment student paid tuition to the UWS institution. The new law addresses the issue of payment for courses taken at an “educational institution” in two important respects. First, it deletes the provision allowing a pupil’s resident school district to reject his application to attend a course in a nonresident school district “if the cost of the course would impose upon the resident school district an undue financial burden in light of the resident school district’s total economic circumstances.” Wis. Stat. § 118.52(6)(b) (2011-12). Second, it revises the tuition provision as follows:

The resident school board shall pay to *the educational institution*, for each resident pupil attending a course *at the educational institution* under this section, an amount equal to the cost of providing the course to the pupil, calculated in a manner determined by the department. *The educational institution may not charge*

¹Because the answer to this question is clear, I find it unnecessary to answer a second question posed by Mr. Stafford. He asks whether requiring tuition payment from a high school student enrolled in a concurrent enrollment course violates the constitutional guarantee of free education “for all children between the ages of 4 and 20 years.” Wis. Const. art. 10, § 3. As I interpret revised Wis. Stat. § 118.52, students taking concurrent enrollment courses are not required to pay tuition for those classes. Therefore, there is no danger that they might be unconstitutionally deprived of their right to a free education.

to or receive from the pupil or the pupil's resident school board any additional payment for a pupil attending a course at the educational institution under this section.

Wis. Stat. § 118.52(12) (new language emphasized).

¶6. You ask whether concurrent enrollment classes come within the ambit of revised Wis. Stat. § 118.52. UWS concludes that they do not; DPI concludes that they do. A concurrent enrollment class is unquestionably a hybrid between a public high school class and a UWS class. The very term used to describe it—*concurrent*—makes that clear. As I will discuss below, such a class has features that closely resemble a high school class (most notably, it is taught by a high school teacher in a high school classroom), as well as features that indicate a high degree of UWS control (for example, acceptance of the student as a UWS “special student,” and issuance of an official UWS transcript). On balance, I find that the greater weight of the salient characteristics of concurrent enrollment supports DPI’s position. Thus, I conclude that a student taking a concurrent enrollment class at her high school attends an educational institution under Wis. Stat. § 118.52.

¶7. The factual basis for my conclusion is taken from the letters and attachments from UWS and DPI, concurrent enrollment brochures published by the UWS campuses at Whitewater, Oshkosh, Green Bay, and Marinette, and a policy paper published by the UWS Financial Administration, *College Credit in High Schools (G36)* (Revised 1998), to which these materials refer. I also reviewed the “Memorandum of Understanding between the Department of Public Instruction and the University of Wisconsin Colleges regarding the Establishment of a Dual Enrollment Partnership,” signed on July 12, 2012, by Tony Evers, State Superintendent of DPI, and Ray Cross, then-Chancellor of UW Colleges and UW-Extension (now President of UWS).

¶8. According to the information you have provided, although a student will typically receive her concurrent enrollment instruction in a high school classroom, she is a student of UWS in many respects. Before she can take a concurrent enrollment course for college credit, she must apply to and be accepted by the UWS institution offering the course. The academic eligibility criteria for admission are set by UWS. If accepted, a student will be enrolled in the UWS institution as a special student. She will receive a UWS grade from the institution, which will be memorialized on a UWS transcript. The student will receive college credit that is no different from college credit earned by attending a conventional UWS course in a conventional manner. While enrolled in the course, the student will have access to a variety of UWS resources, including the library, computer labs, on-campus musical, theatrical, and sporting events, and campus community events.

¶9. While a concurrent enrollment class may be taught by a high school teacher, the teacher’s instruction is circumscribed by UWS in most respects. First, the teacher must be certified and approved by UWS. UWS requires the teacher to have a master’s degree in his field. He is an adjunct professor of the relevant UWS institution for the duration of the concurrent enrollment class. The curriculum and syllabus the teacher uses are developed and implemented in consultation with UWS faculty and subject to UWS approval. The teacher works with a

specifically assigned faculty liaison to accomplish these tasks. The faculty liaison may attend the high school class during the semester to give a guest lecture and to evaluate the high school teacher. According to the UW-Oshkosh brochure, on-campus resources are available to such teachers, including materials from Polk Library and 47 on-campus computer labs. They also receive a TitanCard, the official identification card at UW-Oshkosh. The card provides teachers access to music and theatre productions, athletic games and campus community events.

¶10. Based on the summary of factors in the preceding two paragraphs, I conclude that a student taking a concurrent enrollment class at her high school is attending an educational institution, *i.e.*, a college in the University of Wisconsin System, within the meaning of Wis. Stat. § 118.52. The requirements imposed and benefits granted to the student compel this conclusion, as does the control UWS asserts over the teacher's conduct of the course. UWS offers several arguments in support of its position that concurrent enrollment falls outside Wis. Stat. § 118.52, but none is persuasive.

¶11. First, UWS suggests that the student's high school, not UWS, is "offering" the concurrent enrollment course, so that the course options statute does not apply. *See* Wis. Stat. § 118.52(2) (statute applies to a course "offered by" an "educational institution"). Given the hybrid nature of a concurrent enrollment course, I conclude that it is more accurate to say that the course is "offered" by *both* the student's own high school *and* the UWS institution that approves the teacher (and treats him as an adjunct professor), approves the curriculum and syllabus, accepts the student, and gives the student college credit. This interpretation is consistent with the common understanding of how and by whom an academic course is "offered." *See* Webster's Third New Int'l Dictionary 1566 (Unabridged) (1986) ("offer": "to make available or accessible: SUPPLY, AFFORD . . . <the college [offers] courses in Russian>").

¶12. In each of the rest of its arguments, UWS highlights a specific subsection of Wis. Stat. § 118.52 and explains that it does not apply to a student taking a concurrent enrollment class. These subsections include the extension of the same rights and privileges to a course options student enjoyed by conventional students; the imposition of the same rules and regulations on a course options student applicable to conventional students; and the responsibility of all course options students to provide and pay for their own transportation to a class outside of their resident school district. I will address each of these arguments in turn. However, in addition to their individual shortcomings, these arguments suffer from a common fundamental problem: none of the cited subsections purports to define or limit the types of classes or students that come within the course options statute. For example, a student's access to "all of the rights and privileges of other pupils attending the educational institution" does not determine whether a course he takes is subject to Wis. Stat. § 118.52. The reverse is true. If the student and the class meet the conditions of Wis. Stat. § 118.52(1) and (2), the course options statute applies and the student is thus entitled to the same "rights and privileges" as other students.

¶13. UWS asserts first that Wis. Stat. § 118.52 applies only if the student enjoys all the rights and privileges of the institution, but that concurrent enrollment students enjoy only some UWS rights and privileges. *See* Wis. Stat. § 118.52(9). A course remains within the ambit of

Wis. Stat. § 118.52 even if the educational institution provides the student with less than the full panoply of college benefits associated with the status of a fulltime college student, such as access to student health services. A sensible reading of Wis. Stat. § 118.52(9) is that it guarantees “all of the rights and privileges of other pupils attending the educational institution” *to the extent that* a particular right or privilege might apply to a particular student under the specific circumstances.

¶14. UWS similarly argues that Wis. Stat. § 118.52 applies only if the concurrent enrollment student is subject to the entire universe of rules and regulations in force at the educational institution. It assumes that concurrent enrollment students, physically located in their high schools, will be disciplined exclusively by and according to the rules of their high schools. In UWS’s view, this situation is inconsistent with Wis. Stat. § 118.52(9), which provides that “[a] pupil attending a course at an educational institution under this section . . . is subject to the same rules and regulations as” other pupils attending the educational institution. I conclude that, like the “right or privilege” language in Wis. Stat. § 118.52(8), this provision should be applied reasonably to impose the educational institution’s rules and regulations on the concurrent enrollment student to the extent they relate to the student’s coursework within that institution.

¶15. The hybrid nature of a concurrent enrollment course warrants a hybrid system of discipline. On the one hand, given the physical location of these classes in a public high school, it is reasonable to assume that a student’s physical misconduct (talking or disruptive behavior, for example) would be disciplined by the public school, which has physical control over the student. On the other hand, any form of academic misconduct (cheating or plagiarism, for example) would be subject to the disciplinary apparatus of the UWS institution, as it would be for any other special student. That disciplinary apparatus is described in Wis. Admin. Code § UWS ch. 14. Under the Code, a “[s]tudent” means any person who is *registered* for study in an institution for the academic period in which the misconduct occurred.” *Id.* at § UWS 14.02(13). Because a concurrent enrollment student is enrolled as a special student of UWS and receives a grade from UWS recorded on a UWS transcript, the student is “registered for study in [a UWS] institution.” Thus, she is subject to the UWS sanctions for academic misconduct to the extent they relate to her participation in the concurrent enrollment course.

¶16. On a related note, Wis. Stat. § 118.52(10) provides that the “resident school board shall provide to the educational institution . . . upon request . . . a copy of any expulsion findings” or “disciplinary proceedings.” Presumably, these records would be as available to the UWS as any other “educational institution” subject to Wis. Stat. § 118.52. Significantly, DPI’s “Course Options Application Form” (revised in February 2014), includes a signature box labeled “II. PARENT SIGNATURE AND RELEASE OF RECORDS.” The parent is instructed as follows: “s. 118.52(10), Wis. Stats., authorizes the educational institution to request any student records relating to expulsion.” There is no suggestion that the parent’s release of records is applicable to all educational institutions participating in the course options program *except* UWS institutions.

¶17. Lastly, UWS asserts that the transportation provision, which gives a student’s parent the responsibility for transporting the pupil to and from a course options class, indicates

that the statute cannot possibly apply to a class that is physically located inside a student's high school building. *See* Wis. Stat. § 118.52(11)(a). This transportation rule applies to all educational institutions embraced by the statute. While the statute is clear that parents are responsible for transporting students who *do* have transportation costs, it does not require all course options students to have such costs. Obviously, a student taking a concurrent enrollment course at her own high school needs no special transportation to get there. As to that student, the provision is superfluous. However, the fact that the rule is irrelevant for concurrent enrollment courses does not mean that such courses are therefore exempt from the rest of Wis. Stat. § 118.52.

¶18. My conclusion that concurrent enrollment courses come within the ambit of Wis. Stat. § 118.52 “course options” is consistent with legislative intent. *See State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶51, 271 Wis. 2d 633, 681 N.W.2d 110 (“legislative history is sometimes consulted to confirm or verify a plain-meaning interpretation”). Governor Walker recommended the changes to Wis. Stat. § 118.52 that were ultimately adopted. His intent was to “[e]xpand the part-time open enrollment program to create a course options program.” Dep’t of Admin., Div. of Exec. Budget & Fin., *State of Wisconsin Executive Budget (Scott Walker, Governor)* (February 2013) at 601 (emphasis added). The Legislative Fiscal Bureau prepared an analysis of this expansion plan that it submitted to the Joint Committee on Finance. In that analysis, the Bureau summarized the types of programs that would come under the course options umbrella. Among those programs was the concurrent enrollment program:

In addition to the statutory [part-time open enrollment] programs, the UW System and WTCS [Wisconsin Technical College System] have established by policy additional programs under which pupils can take courses at their high school for postsecondary credit. Under the UW System’s College Credit in High School programs, offered by UW-Oshkosh and UW-Green Bay, students can earn high school and college credit provided they pay for the cost of the college credit, which is currently set at half the per credit tuition rate. DPI and UW Colleges have also entered in the memorandum of understanding to begin a statewide dual enrollment partnership.

Legislative Fiscal Bureau, *Report to Joint Committee on Finance: Expand Part-Time Open Enrollment Program to Course Options Program*, Paper 523 (May 29, 2013) at 3-4 [hereinafter, “LFB Report”]. Governor Walker’s original proposal was enacted into law virtually unchanged.

¶19. I understand that the foregoing interpretation of the statute has a definable financial impact. Before the revision of Wis. Stat. § 118.52, a student taking a concurrent enrollment course for college credit paid tuition (at a reduced rate) to UWS, either directly or indirectly. LFB Report at 30. Under the revised statute, which (as I have concluded) embraces concurrent enrollment courses, the student will pay no tuition to UWS either directly or indirectly. Instead, “[t]he resident school board shall pay to the educational institution, for each resident pupil attending a course at the educational institution under this section, an amount equal to the cost of providing the course to the pupil, calculated in a manner determined by the department [of public instruction].” Wis. Stat. § 118.52(12). Under this language, the financial

impact on UWS (the payments it will receive) and the resident school district (the payments it will make) will be decided by DPI. Not only does the student no longer pay any tuition for a concurrent enrollment course, his application to attend a concurrent enrollment course cannot be denied on the ground that it might impose “an undue financial burden” on his resident school district. Wis. Stat. § 118.52(6)(b).

¶20. Providing concurrent enrollment courses to high school students at no cost to the students is consistent with the legislative intent in revising Wis. Stat. § 118.52. In its report to the Joint Finance Committee, the Fiscal Bureau alerted the Committee to several fiscal implications of the plan:

- The options would be provided at no cost to students, because the educational institutions would not be able to charge any additional payment beyond the DPI-determined amount to pupils participating in the program.

....

- To the extent that school districts would be paying for courses that pupils would pay for under current programs, it could be viewed as an additional mandate on districts, especially since the ability to reject an application on the basis of undue financial burden would be removed under the bill.

LFB Report at 5-6. Directly confronted with these financial questions, the legislature enacted the Governor’s course options proposal without significant amendment.²

¶21. I conclude that the new course options provision of Wis. Stat. § 118.52 applies to concurrent enrollment classes.

Sincerely,

J.B. VAN HOLLEN
Attorney General

JBVH:MFW:mlk

²The LFB Report also warned that implementation of the course options program “would expand DPI’s role in higher education, such as resolving appeals of rejections and determining the cost of courses at institutions of higher education. This would arguably be inconsistent with the statutory responsibilities of the UW Board of Regents and WTCS Board and the governing structures of private and tribal institutions.” LFB Report at 6.